In the Supreme Court of the United States

OCTOBER TERM, 1975

NO. 74-1598

ROBERT K. WEARY AND DALE J. WEARY, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

We invite the Court's attention to the following facts which indicate that the petition for a writ of certiorari was filed out of time. The judgment of the court of appeals was entered on January 15, 1975; and petitioners' petition for rehearing and suggestion for rehearing *en banc* were denied on March 20, 1975 (Pet. App. A9-A10). No extension of time for petitioning was obtained, and the 90-day period in 28 U.S.C. 2101(c) for petitioning in civil cases expired on June 18, 1975. The petition was filed on June 19, 1975.

Since the time limit specified by 28 U.S.C. 2101(c) is jurisdictional, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULY 1975.

DOJ-1975-07